

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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IN RE: NEW ENGLAND COMPOUNDING )  
PHARMACY, INC. PRODUCTS LIABILITY )  
LITIGATION ) MDL No. 1:13-md-2419-RWZ  
)  
This Document Relates to: )  
All Cases )  
)

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**JOINT MOTION BY THE CHAPTER 11 TRUSTEE AND THE OFFICIAL  
COMMITTEE OF UNSECURED CREDITORS FOR LEAVE TO FILE  
JOINT REPLY AS TO CERTAIN BANKRUPTCY ISSUES RAISED IN THE  
PLAINTIFFS' STEERING COMMITTEE'S PROPOSED SUR-SUR REPLY  
IN SUPPORT OF MOTION FOR ENTRY OF COMMON BENEFIT ORDER**

Paul D. Moore, the Chapter 11 Trustee (the “Trustee”) for the bankruptcy Estate of New England Compounding Pharmacy, Inc. (“NECC” or the “Debtor”), and the Official Committee of Unsecured Creditors of NECC (the “Official Committee”), by and through their undersigned counsel, respectfully move, in accordance with Rule 7.1(b)(3) of the Local Rules of the United States District Court for the District of Massachusetts, for leave to file a short reply, in the form attached as Exhibit 1 hereto, to the *Plaintiffs' Steering Committee's (“PSC”) Sur-Sur-Reply in Support of Motion for Entry of Common Benefit Order* (the “Proposed CBF Sur-Sur-Reply”), attached as Exhibit 1 to the PSC’s Motion for leave to file same [Dkt. No. 1008], and in support thereof respectfully state as follows:

On January 17, 2014, the PSC filed the *Plaintiffs' Steering Committee's Motion for Entry of Case Management Order Establishing Assessment Procedures to Fund Common Benefit Account* [Dkt. No. 790] and an accompanying memorandum of law [Dkt. No. 791]. Through the CBF Motion, the PSC seeks to establish procedures to fund a common benefit fund account (the “CBF Account”).

Each of the Trustee and the Official Committee filed a limited objection to the CBF Motion. See Dkt. Nos. 833, 834. On February 6, 2014, the PSC filed the *Plaintiffs' Steering Committee's Reply in Support of Motion for Entry of Common Benefit Order* [Dkt. No. 873] (the "CBF Reply"). In the CBF Reply, the PSC set forth three possible procedural mechanisms to fund the CBF Account, but did not take a position as to which would be most appropriate. With this Court's leave, the Trustee and the Official Committee jointly filed a sur-reply to the CBF Reply on February 13, 2014. See Dkt. No. 914.

On March 12, 2014, almost one month after the filing of the Trustee's and the Official Committee's sur-reply and the evening before this Court's March 13, 2014 MDL hearing, the PSC sought this Court's leave to file the Proposed CBF Sur-Sur Reply. The Proposed CBF Sur-Sur-Reply abandons the agnostic position taken in the CBF Reply as to an appropriate assessment mechanism, and instead advocates a mechanism that contemplates interfering with the property of NECC's bankruptcy estate. Accordingly, the Trustee and the Official Committee respectfully request that the Court grant them leave to file a brief written reply to the Proposed CBF Sur-Sur-Reply to address this issue of bankruptcy law. The Trustee and the Official Committee believe that their reply will be helpful to this Court in ultimately deciding the CBF Motion, and is consistent with the general principles of motion practice, as both parties will have had an opportunity to fully brief the issues before the Court.

WHEREFORE, for all of the foregoing reasons, the Chapter 11 Trustee and the Official Committee respectfully request that this Court grant them leave to file a response to the Proposed CBF Sur-Sur Reply.

*[Remainder of page intentionally left blank]*

Dated: March 20, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Susan G. Oldham, hereby certify that on March 20, 2014, I caused a copy of the foregoing Motion For Leave to File Joint Reply to be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants, by first class mail, postage prepaid.

Dated: March 20, 2014  
Boston, Massachusetts

/s/ Susan G. Oldham  
Susan G. Oldham

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